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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

MARK A. HUFFMAN, M.D.,

Respondent

ORDER DENYING

PETITION FOR REHEARING

The above-captioned matter was commenced by the filing of a Notice of Hearing and Complaint on June 4, 2001. A hearing was held on in the matter on October 22 & 23, 2001, at which respondent appeared by Attorneys Gerald Boyle and Melissa Karls; and the Department of Regulation & Licensing Division of Enforcement appeared by Attorney John R. Zwieg. The administrative law judge filed his Proposed Decision on February 28, 2002, recommending that the license be revoked. Ms. Karls filed objections to the Proposed Decision on March 21, 2002, and oral arguments on the objections were heard by the board on April 24, 2002. Dr. Huffman appeared for oral argument by Attorney Hal Harlowe, and the Division of Enforcement appeared by Mr. Zwieg. The board adopted the Proposed Decision on that date.

Mr. Harlowe filed respondent's Petition for Rehearing in the matter on May 14, 2002, and the board considered the Petition at its meeting of May 22, 2002.

Based upon the petition and upon all other information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition for Rehearing of Mark A. Huffman, M.D., in the above-captioned matter be, and hereby is, denied.

DISCUSSION

Under sec. 227.49(2), Stats., a rehearing may be granted only on the basis of some material error of law, some material error of fact, or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. The petition in this case avers that "following the close of evidence and the entry and filing of a proposed order, new evidence has been discovered that is sufficiently strong to reverse or modify the order."

The administrative law judge found in his Proposed Decision that the complaining witness, Mr. A, "testified credibly that he had no present intention of filing suit [against Dr. Huffman]." The petition asserts that Dr. Huffman was notified three days after the Proposed Decision was filed that the complaining witness was asserting a claim for damages against Dr. Huffman. It is argued that this is new evidence "strongly suggests that Mr. A was lying when he denied a present intention of bringing action against Dr. Huffman and his employer."

To infer that Mr. A intended to file suit at the time of hearing because he decided to do so five months later is pure speculation. Moreover, it is not necessary to decide that Mr. A had no intent to file suit at the time of the hearing to conclude that he was nonetheless credible in his testimony as to the underlying facts of the transactions in question.

Finally, though what respondent deems as new evidence was obviously not available to him at the time of hearing, the existence of the law suit and respondent's argument as to its significance was presented to the board at the time of oral arguments in the matter. At that time Mr. Harlowe urged the board to remand the matter to the administrative law judge to permit reexamination of the credibility issue. The board did not consider the subsequent event in question to be relevant to its consideration of the evidentiary record, and therefore does not consider that subsequent event to constitute the discovery of new evidence sufficiently strong to reverse or modify the board's Order in this matter. Accordingly, respondent's petition must be denied.

Dated this 30th day of May, 2002.

STATE OF WISCONSIN

MEDICAL EXAMINING BOARD

Virginia S. Heinemann

Secretary